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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

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12 KINSALE INSURANCE COMPANY, an Arkansas corporation,

13 Plaintiff,

14 vs.

15 FLAWLESS VAPE WHOLESALE &
16 DISTRIBUTION, INC., a California corporation; TROY HAVENS, an
17 individual

18 Defendants.

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Case No.: 8:18-cv-01535-AG-DFM

[Assigned for All Purposes to the Hon. Andrew J. Guilford, Ctrm 10D]

JUDGMENT

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21   **WHEREAS**, Plaintiff KINSALE INSURANCE COMPANY ("KINSALE")

22 filed a Complaint for Declaratory Relief in this action to establish that the

23 Commercial General Liability Policy No. 0100067678-0, effective May 26, 2018 to

24 May 26, 2019 (the "POLICY"), which it issued to Defendant Flawless Vape

25 Wholesale & Distribution, Inc. ("FLAWLESS"), did not provide a defense or

26 indemnity for FLAWLESS with respect to the action entitled *Havens v. 3 Monkeys*

27 *Smoke Shop #2, Flawless Vape Wholesale & Distribution, Inc., Vital Vapes and*

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Does 1-100, Placer County Superior Court Case No. SCV 0041258 (the *Havens* Action"); and

WHEREAS, KINSALE subsequently filed a First Amended Complaint for Declaratory Relief, which is the operative pleading; and

WHEREAS, KINSALE sought a judicial determination that it had no duty to defend and/or indemnify FLAWLESS or its parents, subsidiaries, divisions, predecessors, successors, officers, directors, employees, agents or anyone else affiliates with FLAWLESS against the *Havens* Action; and

WHEREAS, in the *Havens* Action TROY HAVENS ("HAVENS") sought damages for, among other things, "Bodily injury" arising from an explosion and resulting fire caused in whole or in part by a removable battery inserted into a Tugboat Mechanical Mod he alleges was distributed by FLAWLESS; and

WHEREAS, the POLICY was endorsed with a Battery Exclusion which excluded coverage for "Bodily injury" arising out of batteries as alleged in the First Amended Complaint; and

WHEREAS, KINSALE and HAVENS agreed that KINSALE never had a duty to defend or indemnify FLAWLESS with regard to the *Havens* Action for the reasons stated in the First Amended Complaint; and

WHEREAS FLAWLESS previously stipulated and agreed with KINSALE that FLAWLESS would be bound by any Judgment entered in favor of KINSALE (Dkt. # 16), and such was Ordered by the Court (Dkt. # 16);

IT IS HEREBY ADJUDGED AND DECREED that

1.   KINSALE is entitled to and shall have Judgment in its favor on the First Claim for Relief of its First Amended Complaint for Declaratory Relief (Dkt. # 21) to wit, that there is no potential for coverage for the *Havens* Action under Commercial General Liability Policy No. 0100067678-0 issued by KINSALE to FLAWLESS and that KINSALE does not and never did have a duty to defend FLAWLESS with regard to the *Havens* Action; and

2.   KINSALE is entitled to and shall have Judgment in its favor on the Third Claim for Relief of its First Amended Complaint for Declaratory Relief (Dkt. # 21) to wit, that KINSALE does not have a duty to indemnify any judgment or settlement with regard to the *Havens* Action; and

3.   As to FLAWLESS, KINSALE is entitled to and shall have Judgment in its favor on its First Amended Complaint for Declaratory Relief (Dkt. # 16) in its entirety; and

4.   That Defendants FLAWLESS and HAVENS shall take nothing by way of judgment against KINSALE; and

5.   That KINSALE, FLAWLESS and HAVENS shall each bear its own attorney's fees and costs associated with this Action.

Dated: August 13, 2019   _____

UNITED STATES DISTRICT JUDGE